In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1257

JIMMY SAVILLE AND RITA ANN GUARRASI, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury-waived trial in the United States District Court for the Southern District of California, petitioners were convicted of unlawful importation of narcotics in violation of 21 U.S.C. 174. Saville was sentenced to five years' imprisonment; Guarrasi was sentenced to the custody of the Attorney General pursuant to the Youth Corrections Act. The court of appeals affirmed *per curiam* (Pet. App. A).

The sole question presented relates to the denial of a pre-trial motion to suppress narcotics obtained as a result of "strip" searches of petitioners' persons at the border.[1]

[1] Following the denial, the parties stipulated that the case could be decided on the basis of the evidence introduced on the motion to suppress.

The evidence showed that petitioners drove into the United States from Mexico on June 18, 1969 at the San Ysidro port of entry. After some routine questioning Customs Inspector Burow asked Saville to open the trunk of his car. As he did so, Burow noticed that Saville appeared "somewhat nervous"; he had also hesitated in answering certain questions and had difficulty in keeping his hands steady and in handling his keys (Tr. 5–8).[2] Burow examined the trunk and the glove compartment, but found no contraband.

Petitioner Guarrasi was also "extremely nervous" when asked to produce her identification, interrupting her answers to routine questions by long pauses, and experiencing difficulty in keeping her hands steady; a prominent vein in her neck indicated a rapid heartbeat (Tr. 8–9, 26–27).

Burow then directed the car to the secondary inspection area[3] and escorted petitioners inside the customs office. A frisk of Saville and a search of Miss Guarrasi's handbag revealed no weapons. During this time, Burow testified that both Miss Guarrasi and Saville continued to appear nervous (Tr. 9, 29). Burow thereupon ordered a strip search of both subjects (Tr. 10, 30).

Burow and another male officer conducted the search of Saville in the search room. Petitioner was asked to remove his articles of clothing one at a time. When he had stripped to his athletic supporter, he balked but was told by the inspector that he would have to

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[2] We are lodging a transcript of the suppression hearing with the Clerk.

[3] A search of the vehicle at the secondary inspection station also failed to reveal any contraband (Tr. 36).

remove it; Saville then removed from the supporter two contraceptives which he handed to Burow. Saville was then allowed to dress. An immediate test of the substance removed from the contraceptives disclosed that it contained narcotics. Saville was placed under arrest and taken to another room (Tr. 10–11).

When Burow came out of the search room, a female customs inspector informed him that Miss Guarrasi had refused to remove her panties (Tr. 12–13). Miss Guarrasi was in another room crying hysterically. Burow advised her that it was necessary that she be searched and that, if required, she would be taken to the county hospital or jail for that purpose. Miss Guarrasi did not respond but continued to cry. Saville then called out from another room that it was all his fault and that she should "give them what they want" (Tr. 12–14). After a few moments, Miss Guarrasi agreed (Tr. 14). The inspectress was recalled and accompanied Miss Guarrasi to the searchroom. Within five or ten minutes the inspectress returned with three contraceptives (later found to contain cocaine) which Miss Guarrasi had removed from her panties (Tr. 14–36). Inspector Burow was not present during the search of Miss Guarrasi (Tr. 33).

On cross-examination Burow, who had been a customs inspector for three and one-half years, was asked whether petitioners' nervousness was the most relevant factor he had considered in ordering the strip search. He replied "[n]ot necessarily" and explained his decision by saying that he "just had an uncanny feeling about the whole thing, and that's all I can

tell you * * *. Something just wasn't right"; this feeling, he said, stemmed from his experience as a customs agent (Tr. 19–20, 30, 38).

The court of appeals affirmed, finding that the customs agent's suspicion met the test of *United States* v. *Guadalupe-Garza,* 421 F. 2d 876, 879 (C.A. 9) in that it was supported by "objective, articulable facts that would reasonably lead an experienced, prudent customs official to suspect" that petitioners were concealing contraband on their bodies (Pet. App. A).

We believe the ruling below was correct. Nevertheless a closely related question whether a Customs inspector's unexplained suspicion is sufficient basis for requiring individuals to disrobe in private so that their clothing may be searched for suspected contraband is presently before the Court in another Ninth Circuit case, *United States* v. *Johnson,* No. 577, this Term, certiorari granted, January 11, 1971. Accordingly, the Court may wish to defer disposition of the instant petition until after *Johnson* is decided.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

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